



# Hornsea Project Four: Compulsory Acquisition

## Section 127 Statement

**Deadline 7, Date: 10 August 2022**

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**Revision Summary**

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**Revision Change Log**

<i>Rev</i>	<i>Page</i>	<i>Section</i>	<i>Description</i>
01	N/A	N/A	Submitted at Deadline 7

## 1 Introduction

- 1.1.1 Orsted Hornsea Project Four Limited (hereafter referred to as “the Applicant”) has submitted a Development Consent Order (“DCO”) application for the construction, operation, maintenance and decommissioning of the Hornsea Four Offshore Wind Farm and associated development (“Hornsea Four”).
- 1.1.2 As set out in Section 9.1.2 of the [E1.2: Statement of Reasons \(APP-227\)](#), the Order land includes land, rights or other interests owned by statutory undertakers.
- 1.1.3 Section 127 (“s127”) of the Planning Act 2008 (“PA 2008”) applies where:
- 1.1.3.1 the land or interest has been acquired by statutory undertakers for the purposes of their undertaking;
  - 1.1.3.2 a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn; and
  - 1.1.3.3 as a result of the representation the Secretary of State is satisfied that the land is used for the purposes of carrying on the statutory undertakers' undertaking, or an interest in the land is held for those purposes.
- 1.1.4 Section 127(2) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of statutory undertakers' land to the extent that:
- 1.1.4.1 the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
  - 1.1.4.2 the land can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking.
- 1.1.5 Section 127(5) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of a right over statutory undertaker's land by the creation of a new right over land to the extent that:
- 1.1.5.1 the right can be purchased without serious detriment to the carrying on of the undertaking; or
  - 1.1.5.2 any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of the other land belonging to or available for acquisition by them.
- 1.1.6 The DCO application includes provisions authorising the compulsory acquisition of land and/or new rights over land, or affecting rights, belonging to statutory undertakers. It is noted that compulsory acquisition powers are only being sought in respect of the onshore elements of Hornsea Four and therefore the tests set out in s127 of the PA 2008 only apply to a statutory undertaker's onshore apparatus or onshore land/rights. As at Deadline 7, a number of representations made by statutory undertakers have not been formally withdrawn.

- 1.1.7 However, in all cases the Applicant has agreed the form of protective provisions for those statutory undertakers and the agreed protective provisions have been included in Schedule 9 of the draft DCO submitted at Deadline 7. The withdrawal of the representations by the relevant statutory undertakers is pending completion of side agreements that are in the process of being signed. The Applicant is confident that the representations will be withdrawn prior to or shortly after the close of the Examination.
- 1.1.8 To assist the Examining Authority in the event that the representations are not formally withdrawn for any reason, the Applicant has set out in the table below the reasons why the Applicant considers that the tests set out in s127(2) and s127(5) of the PA 2008 are satisfied.
- 1.1.9 For completeness, the Applicant has also included in the table below the position in respect of all statutory undertakers, including operators of electronic communications code networks.
- 1.1.10 Section 138 of the PA 2008 is engaged by Article 30 of the draft DCO. This Article will permit the undertaker to extinguish or relocate the rights or apparatus of statutory undertakers and electronic communications apparatus. Such power may only be included in the DCO if the Secretary of State is satisfied the extinguishment or removal is necessary for the authorised development.
- 1.1.11 As set out in paragraph 9.1.2.9 of the [E1.2: Statement of Reasons \(APP-227\)](#), the construction of Hornsea Four will require interference with statutory undertakers' land and the possible relocation of their apparatus and electronic communications apparatus. However, the exercise of such powers will be carried out in accordance with the protective provisions which set out constraints on their exercise with a view to safeguarding the statutory undertakers' and electronic communications apparatus owners' interests. The Applicant therefore considers that the test set out s138 of the PA 2008 is satisfied.

## 1. Statutory Undertakers

Plot Nos.	Statutory undertaker or other apparatus owner	Engagement of Section 127	Applicant's Position
280, 317, 318, 319, 323, 325, 340, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356	<b>National Grid Electricity Transmission plc (NGET)</b>	<p>NGET submitted representations in respect of the DCO application (RR-025 and REP2-063). As at Deadline 7, this representation has not been withdrawn.</p> <p>NGET has confirmed that the form of protective provisions included in Part 3A of Schedule 9 to the draft DCO submitted at Deadline 7 is agreed.</p> <p>A side agreement is an agreed form and being circulated for signature. Once the side agreement has been completed, NGET will formally withdraw its representation.</p> <p>For the avoidance of any doubt, and as stated in paragraph 1.1.6 above, compulsory acquisition powers are only being sought in respect of the onshore elements of Hornsea Four and therefore the tests set out in s127 of the PA 2008 only apply to NGET's onshore apparatus or onshore land/rights. However, the side agreement includes provisions relating to the offshore interactions between NGET's EGL2 project and Hornsea Four, including a requirement to enter into a proximity agreement.</p>	<p>NGET owns land and has apparatus and interests within the Order land for the purposes of its undertaking as an Electricity Act 1989 licence holder. Agreed protective provisions for the benefit of NGET are included in Part 3A of Schedule 9 to the draft DCO submitted at Deadline 7.</p> <p>In its representations, NGET raised concerns regarding works being carried out in proximity to its apparatus and the use of compulsory acquisition powers unless and until suitable protective provisions had been secured in the draft DCO. In REP2-063, NGET requested a number of provisions to be included in the Protective Provisions relating to approval of plans for works within 15m of its apparatus, a restriction on the use of compulsory acquisition powers and provisions relating to the uncapped indemnity. These points have been addressed in paragraphs 6 and 9 of Part 3A of Schedule 9 and the separate side agreement that the parties are in the process of completing. The Applicant therefore considers that the Protective Provisions adequately address the concerns raised by NGET.</p> <p>The Applicant is not intending to extinguish any rights belonging to NGET.</p> <p>Given the protection afforded by the protective provisions, the Applicant considers that the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of NGET's undertaking.</p>

39, 40, 282	<b>National Grid Gas plc</b>	<p>National Grid Gas submitted representations in respect of the DCO application (RR-026 and REP2-064). As at Deadline 7, this representation has not been withdrawn.</p> <p>National Grid Gas has confirmed that the form of protective provisions included in Part 3B of Schedule 9 to the draft DCO submitted at Deadline 7 is agreed.</p> <p>A side agreement is in an agreed form and being circulated for signature. Once the side agreement has been completed, National Grid Gas will formally withdraw its representation.</p>	<p>National Grid Gas has apparatus and interests within the Order land for the purposes of its undertaking as a gas transporter. Agreed protective provisions for the benefit of National Grid Gas are included in Part 3B of Schedule 9 to the draft DCO submitted at Deadline 7.</p> <p>In its representations, National Grid Gas raised concerns regarding works being carried out in proximity to its apparatus and the use of compulsory acquisition powers unless and until suitable protective provisions had been secured in the draft DCO. In REP2-064, National Grid Gas requested a number of provisions to be included in the Protective Provisions relating to approval of plans for works within 15m of its apparatus, a restriction on the use of compulsory acquisition powers and provisions relating to the uncapped indemnity. These points have been addressed in paragraphs 6 and 9 of Part 3B of Schedule 9 and the separate side agreement that the parties are in the process of completing. The Applicant therefore considers that the Protective Provisions adequately address the concerns raised by National Grid Gas.</p> <p>The Applicant is not intending to extinguish any rights belonging to National Grid Gas.</p> <p>Given the protection afforded by the protective provisions, the Applicant considers that the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of National Grid Gas' undertaking.</p>
176	<b>Network Rail Infrastructure Limited</b>	Network Rail has withdrawn its representation and therefore s127 of the PA 2008 is not triggered.	Agreed protective provisions for the benefit of Network Rail are included in Part 4 of Schedule 9 to the draft DCO submitted at Deadline 7.

<p>44, 66, 225, 227, 228, 242, 252, 253, 257, 258, 259, 269, 315, 320, 321, 322, 324, 325</p>	<p><b>Northern Gas Networks Limited</b></p>	<p>Northern Gas Networks submitted a representation in respect of the DCO application (RR-030). As at Deadline 7, this representation has not been withdrawn.</p> <p>A crossing deed is in an agreed form and being circulated for signature. Once the side agreement has been completed, Northern Gas Networks will formally withdraw its representation.</p>	<p>Northern Gas Networks has interests and apparatus within the Order Land for the purposes of its undertaking as a gas transporter. The Applicant has included Protective Provisions for the benefit of gas transporters, which includes Northern Gas Networks, in Part 1 of Schedule 9 of the draft DCO submitted at Deadline 7.</p> <p>In its relevant representation (RR-030) Northern Gas Networks raised concerns relating to works in proximity to its high pressure gas pipelines. In particular, Northern Gas Networks specified that no test digs should take place on or close to the high-pressure gas pipelines without a Northern Gas Networks' representative on site, with the same requirement continuing through the construction phase.</p> <p>The Protective Provisions in the draft DCO ensure that Northern Gas's apparatus will be protected and access maintained during construction. Paragraph 7(1) of Part 1 of Schedule 9 to the draft DCO requires the Applicant to submit a plan, section and description to Northern Gas Networks prior to carrying out any works that are near to or may affect Northern Gas Networks' apparatus. Northern Gas Networks can impose reasonable requirements for the protection of its apparatus and is entitled to watch and inspect the execution of the works (paragraph 7(3) of Part 1 of Schedule 9). The Applicant therefore considers that the Protective Provisions adequately address the concerns raised by Northern Gas Networks.</p> <p>The Protective Provisions also ensure that (if necessary) no apparatus will be acquired without Northern Gas's agreement (paragraph 4 of Part 1 of Schedule 9) and no apparatus removed, or rights extinguished, until alternative apparatus has been constructed or rights granted (paragraph 5 of Part 1 of Schedule 9). However, the</p>
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<p>14, 15, 18, 37, 39, 62, 63, 72, 74, 75, 78, 79, 80, 82, 83, 84, 85, 86, 87, 88, 90, 92, 93, 106, 109, 110, 130, 145, 147, 148, 163, 164, 165, 166, 167, 169, 181, 182, 215, 216, 228, 233, 234, 235, 236, 237, 238, 239, 244, 252, 279, 280, 282, 294,</p>	<p><b>Northern Powergrid (Yorkshire) plc</b></p>	<p>Northern Powergrid has withdrawn its representation and therefore s127 of the PA 2008 is not triggered.</p>	<p>Agreed protective provisions for the benefit of Northern Powergrid are included in Part 11 of Schedule 9 to the draft DCO submitted at Deadline 7.</p>



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310, 314, 315, 318, 319, 320, 321, 322, 323, 324, 325, 330, 331, 332, 333, 334, 340, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 355, 356			
343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356	<b>UK Power Distribution Limited</b>	UK Power Distribution did not submit a representation about the application for a DCO and therefore s127 of the PA 2008 is not triggered.	The Applicant has included Protective Provisions in Part 1 of Schedule 9 of the draft DCO for the benefit of electricity licence holders which includes UK Power Distribution.
20, 26, 35, 36, 66, 69, 74, 83, 84, 85, 90, 92, 93, 122, 186, 187, 191, 195, 198, 208, 209, 210, 221, 225, 227, 242, 243, 278, 279, 280, 281, 294, 309,	<b>Yorkshire Water Services Limited</b>	Yorkshire Water did not submit a representation about the application for a DCO and therefore s127 of the PA 2008 is not triggered.	The Applicant has included Protective Provisions in Part 1 of Schedule 9 of the draft DCO for the benefit of water and sewerage undertakers which includes Yorkshire Water.

310, 311, 312			
343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356	<p><b>Doggerbank Offshore Wind Farm Project 1 Projco Limited and Doggerbank Offshore Wind Farm Project 2 Projco Limited</b></p>	<p>Dogger Bank submitted representations in respect of the DCO application (REP5-093, REP5-095, REP-096, REP-097 and REP-098). As at Deadline 7, this representation has not been withdrawn.</p> <p>Dogger Bank has confirmed that the form of protective provisions included in Part 7 of Schedule 9 and Schedule 13 to the draft DCO submitted at Deadline 7 are agreed.</p> <p>A side agreement is in an agreed form and being prepared for signature. Once the side agreement has been completed, Dogger Bank will formally withdraw its representation.</p>	<p>Dogger Bank has interest in the Order land for the purposes of its undertaking as an Electricity Act 1989 licence holder. Agreed protective provisions for the benefit of Dogger Bank have been included in Part 7 of Schedule 9 (and reciprocal provisions in Schedule 13) of the draft DCO submitted at Deadline 7.</p> <p>In its representations (REP5-093, REP5-095, REP-096, REP-097 and REP-098), Dogger Bank requested a number of additional provisions in order to protect its apparatus including provisions relating to the approval of plans prior to undertaking works, payment of costs, indemnity for losses and maintenance of access. These provisions have been included in paragraphs 9, 10 and 11 of Part 7 of Schedule 9 of the draft DCO submitted at Deadline 7. The Applicant therefore considers that the Protective Provisions adequately address the concerns raised by Dogger Bank.</p> <p>The Protective Provisions also ensure that (if necessary) no compulsory acquisition powers can be exercised without Dogger Bank's agreement (paragraph 4 of Part 7 of Schedule 9). The Applicant is not intending to extinguish any rights belonging to Dogger Bank.</p> <p>Given the protection afforded by the protective provisions, the Applicant considers that the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of Dogger Bank's undertaking.</p>

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<p>78, 86, 106, 107, 108, 109, 121, 122, 123, 124, 125, 128, 129, 145, 146, 147, 157, 158, 159, 160, 161, 196, 199, 200, 346</p>	<p><b>Environment Agency</b></p>	<p>The EA has confirmed that the form of protective provisions included in Part 5 of Schedule 9 to the draft DCO submitted at Deadline 7 is agreed.</p> <p>The Statement of Common Ground submitted at Deadline 7 confirms that all matters are now agreed and therefore the Applicant considers that the EA's representation is withdrawn for the purposes of s127 of the PA 2008.</p>	<p>The Applicant has included Protective Provisions for the benefit of the EA in Part 5 of Schedule 9 to the draft DCO submitted at Deadline 7.</p>
<p>2A, 3A, 10, 12, 21, 27, 28, 29, 30, 31, 32, 51, 52, 53, 54, 58, 59, 60, 61, 62, 67, 86, 87, 88, 97, 99, 100, 101, 109, 110, 127, 141, 142, 143, 144, 153, 163, 166, 167, 168, 169, 170, 171, 172, 173, 174</p>	<p><b>The Beverley and Holderness Internal Drainage Board</b></p>	<p>The Beverley and Holderness Internal Drainage Board did not submit a representation about the application for a DCO and therefore s127 of the PA 2008 is not triggered.</p>	<p>The Applicant has included Protective Provisions for the benefit of the IDB in Part 6 of Schedule 9 to the draft DCO submitted at Deadline 7.</p>
<p>107, 108, 121, 122, 123, 124, 125</p>	<p><b>Driffield Navigation Trust</b></p>	<p>The Applicant understands that the Driffield Navigation is not a statutory undertaker for the purposes of s127 of the PA 2008. In any event, the Driffield Navigation did not submit a representation about the application for a DCO</p>	<p>The Applicant has included provisions in Article 28(13) to (17) and Article 29(13) to (17) for the protection of Driffield Navigation Trust.</p>

		and therefore s127 of the PA 2008 is not triggered.	
20, 24, 26, 36, 41, 43, 44, 45, 46, 47, 48, 49, 50, 57, 70, 74, 75, 78, 79, 80, 83, 84, 85, 133, 134, 140, 150, 151, 153, 155, 167, 168, 185, 186, 190, 191, 195, 197, 198, 205, 206, 207, 208, 210, 215, 216, 218, 219, 220, 221, 225, 228, 229, 230, 231, 232, 233, 237, 239, 253	<b>British Telecommunications PLC</b>	BT is not a statutory undertaker for the purposes of s127 of the PA 2008. In any event, BT did not submit a representation about the application for a DCO and therefore s127 of the PA 2008 is not triggered.	BT has apparatus within the Order Limits. The Applicant has included Protective Provisions within Part 2 of Schedule 9 and the draft DCO for the benefit of operators of electronic communications code networks, which includes BT.
338	<b>Cornerstone Telecommunications Infrastructure Limited</b>	Cornerstone Telecommunications Infrastructure Limited is not a statutory undertaker for the purposes of s127 of the PA 2008. In any event, Cornerstone Telecommunications Infrastructure Limited did not submit a representation about the application for a DCO and therefore s127 of the PA 2008 is not triggered.	Cornerstone has rights for apparatus within the Order Limits. The Applicant has included Protective Provisions within Part 2 of Schedule 9 and the draft DCO for the benefit of operators of electronic communications code networks, which includes Cornerstone.

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195, 198, 242, 253, 274, 278, 309, 312, 313, 314, 315, 318, 343, 344	<b>KCOM Group Limited</b>	KCOM Group Limited is not a statutory undertaker for the purposes of s127 of the PA 2008. In any event, KCOM Group Limited did not submit a representation about the application for a DCO and therefore s127 of the PA 2008 is not triggered.	KCOM has apparatus within the Order Limits. The Applicant has included Protective Provisions within Part 2 of Schedule 9 and the draft DCO for the benefit of operators of electronic communications code networks, which includes KCOM.
346, 347, 348, 350, 352	<b>Vodafone Limited</b>	Vodafone is not a statutory undertaker for the purposes of s127 of the PA 2008. In any event, Vodafone did not submit a representation about the application for a DCO and therefore s127 of the PA 2008 is not triggered.	Vodafone has Apparatus within the Order Limits. The Applicant has included Protective Provisions within Part 2 of Schedule 9 and the draft DCO for the benefit of operators of electronic communications code networks, which includes Vodafone.